

REMARKS

Upon entry of the present amendment, claims 4-8 and 10 will remain pending in the above-identified application and stand ready for further action on the merits. Claims 1-3 and 9 have been cancelled. Claims 4, 6, 8 and 10 have been amended to incorporate limitations from previously claim 1, so that claims 4, 6, 8 and 10 are now each written as independent claims.

The present amendments to the claims do not introduce new matter into the application as originally filed, since the amendments find support in original claim 1, which is now cancelled.

Accordingly, entry of the instant amendment and favorable action on the merits is earnestly solicited at present.

Enclosed Verified Translation of JP 2002-102456

Enclosed with the instant reply is a verified English translation of JP 2002-102456, upon which priority has been claimed under the provisions of 35 USC § 119. The JP 2002-102456 patent application was filed in the Japan Patent Office (JPO) on April 4, 2002. This filing date predates the effective prior art date of the secondary cited art reference of **Francom et al.** (J. Org. chem., 68 (2), pp. 666-669 (2003)), which has been cited against the instant claims under the provisions of 35 USC § 103(a).

A review of the enclosed verified English translation of JP 2002-102456 shows that it provides full 37 CFR § 112 written description support for the invention as instantly claimed. The Examiner is respectfully requested to review the enclosed English translation at this time in order to verify this fact.

Because the enclosed verified English Translation of JP 2002-102456 provides full written description support for the instantly claimed invention, it follows that the secondary cited art reference of **Francom et al.** has been effectively antedated for all that it is relied upon for by the USPTO in articulating the outstanding rejection of claims 1-5 and 8-9 under 35 USC § 103(a) (*see below*).

Claim Rejections – 35 USC § 103(a)

Claims 1-3 have been rejected under the provisions of 35 USC § 103(a) as being rendered obvious and unpatentable over **EP ‘365** (EP 1172365) in view of **Dhanda et al.** (J. Chem. Soc., Perkin Trans., 1, pp. 4 369-3475 (1999)).

Claims 1-5 and 8-9 have been rejected under the provisions of 35 USC § 103(a) as being rendered obvious and unpatentable over **EP ‘365** (EP 1172365) in view of **Francom, et al.** (J. Org. chem., 68 (2), pp. 666-669 (2003)).

Reconsideration and withdrawal of the above rejections are respectfully requested based on the following considerations.

First, as indicated above claims 1-3 have been cancelled in the instant reply. As such, the outstanding rejection of claims 1-3 over EP ‘365 in view of **Dhanda et al.** has been rendered moot.

Second, as to the outstanding rejection of claims 1-5 and 8-9, the submission of the enclosed verified English translation of JP 2002-102456 effectively antedates the secondary cited art reference of **Francom et al.** As such, the outstanding rejection of claims 1-5 and 8-9 over EP ‘365 in view of **Francom et al.** has been rendered moot.

Double Patenting Rejections

Claims 1-10 have been rejected on the non-statutory grounds of Obviousness-Type Double Patenting, as being unpatentable over claims 1-16 of U.S. Patent No. 6,936,713. Reconsideration and withdraw of this rejection is respectfully requested based on the submission on even date herewith of (i) an appropriate terminal disclaimer and (ii) terminal disclaimer fee.

Based on the above considerations, the USPTO is respectfully requested to reconsider and withdraw all outstanding rejections of record, and to issue a Notice of Allowance that clearly indicates that each of instantly pending claims 4-8 and 10 is allowed and patentable. Any contentions of the USPTO to the contrary, must be reconsidered at present.

CONCLUSION

Based upon the amendments and remarks presented herein, the Examiner is respectfully requested to issue a Notice of Allowance clearly indicating that each of pending claims 4-8 and 10 are allowed and patentable under the provisions of Title 35 of the United States Code.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey (Reg. No. 32,881) at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

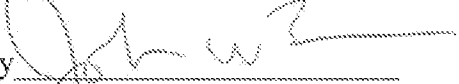
If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Application No. 10/509,802
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Respectfully submitted,

By 

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Enclosure: Verified English Translation of JP 2002-102456; and
Terminal Disclaimer over US 6,936,713